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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA  
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12                  TRISTATE ROOFING INC., a Washington  
13                  corporation,

14                  Plaintiff,

15                  v.

16                  ACHTEN'S QUALITY ROOFING &  
17                  CONSTRUCTION, INC., a Washington  
18                  corporation,

19                  Defendant.

20                  CASE NO. 3:22-cv-05835-RJB

21                  ORDER DENYING MOTION TO  
22                  COMPEL WITHOUT PREJUDICE  
23                  AND GRANTING EXTENSION OF  
24                  TIME

25                  This matter comes before the Court on the Plaintiff's Motion to Compel (Dkt. 59) and  
26                  Defendant's motion for an extension of time to respond to discovery requests (Dkt. 62). The  
27                  Court has considered the pleadings filed regarding the motions and the remaining file.

28                  On October 31, 2022, the Plaintiff Tristate Roofing Inc. ("Tristate") filed this federal  
29                  trademark case in connection with the Defendant Achten Quality Roofing & Construction, Inc.'s  
30                  ("Achten") alleged impermissible use of Tristate's mark WE GOT YOU COVERED. Dkt. 1.  
31                  On December 12, 2022, Tristate filed its First Amended Complaint, asserting claims for "federal

1 unfair competition" under 15 U.S.C. § 1125(a), "registered service-mark infringement" pursuant  
2 to 15 U.S.C. §§ 1116 and 1117, "mark dilution," and violation of the Washington State  
3 Consumer Protection Act, RCW 19.86.020, *et. seq.* Dkt. 21.

4       **Prior Motion Regarding Defendant's Discovery.** On January 18, 2023, Defendant  
5 Achten propounded its first set of interrogatories and requests for production. Dkt. 46 at 4-29.  
6 On February 20, 2023, Plaintiff Tristate responded. Dkt. 47 at 9-53. On March 8, 2023,  
7 Defendant Achten emailed Plaintiff Tristate, detailing discovery not produced and requesting a  
8 meeting to confer about it. Dkt. 47. On March 16, 2023, the parties held a teleconference to  
9 discuss the outstanding discovery. *Id.* After an exchange of emails regarding proposed  
10 protective orders, Defendant set several more emails to the Plaintiff about the outstanding  
11 discovery. *Id.* On April 17, 2023, the parties held another conference call to discuss the  
12 discovery. *Id.*

13       On Saturday, April 22, 2023, Plaintiff Tristate mailed a flash drive, with around 4,000  
14 pages of discovery on it, to the Defendant; but the documents were not received until May 1,  
15 2023. Dkts. 53 at 4 and 53-3 at 2. Prior to Defendant's receipt of the flash drive, it filed a motion  
16 to compel the sought after discovery. Dkt. 45. That motion to compel was granted, in part, and  
17 denied, in part. Dkt. 58.

18       **Current Motion Regarding Plaintiff's Discovery.** As is relevant to the pending  
19 motion, on March 27, 2023, the Plaintiff propounded its First Set of Requests for Admission to  
20 Defendant, which included 226 requests for admission (Dkts. 60-1), First Set of Interrogatories  
21 to Defendant, which included 17 interrogatories (Dkt. 60-2), and First Set of Requests for  
22 Production, which contained five requests for production (Dkt. 60-3). On May 1, 2023,  
23 Defendant responded, asserted various objections and raised the issues of needing a protective  
24

order and more time to supplement their responses. Dkts. 60-4, 60-5, and 60-6. On May 5, 2023, the parties held a telephone conference to discuss the Defendant's responses. Dkt. 60-7 at 4-5. The parties agreed to a two week extension of time for the Defendants to supplement its responses. Dkt. 60-7 at 2. On May 19, 2023, the parties held another telephone conference at which the Defendant requested additional time (to June 19, 2023) due to the volume of records. Dkt. 60-8. The parties were unable to agree. *Id.*

**Pending Motion to Compel and Motion for Extension of Time to Respond.** The Plaintiff filed the motion to compel on May 20, 2023. Dkt. 59. The Defendant responded, opposed the motion, and moved for an extension of time (90 days) to complete its responses to the discovery requests. Dkt. 62. The Defendant points to the volume of the requested discovery and states, for example, that it has identified approximately 555,289 documents that may be responsive to the Plaintiff's discovery requests. *Id.* The Plaintiff has filed a reply (Dkt. 65) and the motion is ripe for consideration.

## DISCUSSION

## A. MOTION TO COMPEL - MEET AND CONFER

Fed. R. Civ. P. Rule (“Rule”) 37(a)(1), “Motion for Order Compelling Disclosure or Discovery,” provides,

On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

Local Rule for Western District of Washington (“Local Rule”) 37(a)(1) additionally provides:

Any motion for an order compelling disclosure or discovery must include a certification, in the motion or in a declaration of affidavit, that the movant has in

1 good faith conferred or attempted to confer with the person or party failing to  
 2 made disclosure or discovery in an effort to resolve the dispute without court  
 3 action. The certification must list the date, manner, and participants to the  
 4 conference. If the movant fails to include such a certification, the court may deny  
 the motion without addressing the merits of the dispute. A good faith effort to  
 confer with a party or person not making a disclosure or discovery requires a face-  
 to-face meeting or a telephone conference. . .

5 Counsel for both parties met by phone to discuss concerns regarding Defendant's  
 6 response to the Plaintiff's discovery requests. Less than a month after they were due, and after  
 7 the Defendant made multiple requests for an extension of time to respond, the Plaintiff filed this  
 8 motion. While the Plaintiff agreed to a short two week extension of time to allow the Defendant  
 9 to supplement the record, it declined to afford it any further time. The Plaintiff has failed to  
 10 demonstrate that it conferred in good faith to resolve the issues before turning to the court for  
 11 intervention. Accordingly, the Plaintiff's motion to compel discovery (Dkt. 59) should be denied  
 12 without prejudice. The parties are expected to resolve discovery matters between themselves as  
 13 much as possible.

14 **B. STANDARD ON DISCOVERY GENERALLY AND ON MOTION TO  
 15 COMPEL**

16 Rule 26(b)(1) provides: “[U]nless otherwise limited by court order, the scope of  
 17 discovery is as follows: parties may obtain discovery regarding any nonprivileged matter that is  
 18 relevant to any party's claim or defense and proportional to the needs of the case. . .” “The court  
 19 should and ordinarily does interpret ‘relevant’ very broadly to mean matter that is relevant to  
 anything that is or may become an issue in the litigation.” *Oppenheimer Fund, Inc. v.*  
 20 *Sanders*, 437 U.S. 340, 351, n.12 (1978)(quoting 4 J. Moore, Federal Practice ¶ 26.56 [1], p. 26-  
 21 131 n. 34 (2d ed. 1976)). Rule 37(a)(3)(B), provides in relevant part, that “[a] party seeking  
 22 discovery may move for an order compelling an answer, designation, production, or inspection.

1 This motion may be made if: . . . (iii) a party fails to answer an interrogatory submitted under  
2 Rule 33, or (iv) a party fails to produce documents . . . as required under Rule 34.”

3       The Plaintiff has failed to show that the Defendant has “failed” to answer the requests for  
4 admission, interrogatories or requests for production particularly considering that the Defendant  
5 has sent initial responses and indicated that it needs more time to go through 246 requests for  
6 admission, 17 interrogatories and over half-million documents that are potentially responsive to  
7 the requests for production. Further, a cursory review of the responses indicates that the  
8 Defendant has raised several objections. It is not clear that those objections do not have merit.  
9 Simply put, this motion is premature.

10           **C. PLAINTIFF’S MOTION ATTORNEY FEES’ FOR MOTION TO COMPEL**

11       Pursuant to Rule 37(a)(5)(A), if a motion to compel is granted the court must require the  
12 party whose conduct necessitated the motion to pay the movant’s reasonable expenses, including  
13 attorneys’ fees, incurred in making the motion unless “other circumstances make an award of  
14 expenses unjust.”

15       The Plaintiff’s motion for attorneys’ fees related to the motion to compel should be  
16 denied without prejudice. The motion to compel has been denied without prejudice.

17           **D. DEFENDANT’S MOTION FOR AN EXTENSION OF TIME TO  
18 SUPPLEMENT DISCOVERY RESPONSES**

19       Pursuant to Rule 16, the court may extend deadlines for good cause. Further, Rules  
20 36(a)(3) (requests for admission), 33(b)(2) (interrogatories) and 34(b)(2) (requests for  
21 production) permit the court to extend the 30-day deadline to respond to these discovery  
22 requests.

23       The Defendant has stated sufficient good cause for a 60-day extension, rather than a 90-  
24 day extension, of time to further respond to the Plaintiff’s discovery requests. Its motion (Dkt.

1 62) should be granted, in part. It should be given 60 days from June 6, 2023 (the day its motion  
2 was filed) to respond.

3 **E. OTHER ISSUES**

4 As stated in a prior order, the parties appear to be struggling to work together to complete  
5 basic tasks in this case. They are encouraged to make every effort to resolve issues like the ones  
6 raised here professionally and without court intervention.

7 **ORDER**

8 It is **ORDERED** that:

- 9 • The Plaintiff's Motion to Compel (Dkt. 59) **IS DENIED WITHOUT**  
10 **PREJUDICE**, and
- 11 • The Defendant's motion for an extension of time to respond to discovery requests  
12 (Dkt. 62) **IS GRANTED**;
  - 13 ○ The deadline for the Defendant to respond to the Plaintiff's discovery  
14 requests **IS EXTENDED** to 60-days from June 6, 2023.

15 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
16 to any party appearing pro se at said party's last known address.

17 Dated this 12th day of June, 2023.

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20 ROBERT J. BRYAN  
United States District Judge